

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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E. RANDOL SCHOENBERG,

Plaintiff,

-against-

UNITED STATES DEPARTMENT OF  
JUSTICE, including its component the  
Federal Bureau of Investigation,

Defendant.  
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No. 16-CV-9445

COMPLAINT

**COMPLAINT FOR INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. §§552 *et seq.*, seeking the production of agency records improperly withheld by Defendant United States Department of Justice ("DOJ"), specifically its component the Federal Bureau of Investigation ("FBI") ("Defendant"), in response to requests properly made by Plaintiff.

2. On October 28, 2016, FBI Director James Comey sent a letter to Congress explaining that, based on emails between Huma Abedin and Hillary Clinton found on Anthony Weiner's computer in an unrelated investigation, he would re-open the investigation into whether there was evidence of illegal activity committed by Hillary Clinton that would warrant an FBI prosecution.<sup>1</sup>

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<sup>1</sup> Sari Horwitz, *Read the Letter Comey Sent to FBI Employees Explaining His Controversial Decision on the Clinton Email Investigation*, WASH. POST, Oct. 28, 2016, <https://www.washingtonpost.com/news/post-nation/wp/2016/10/28/read-the-letter-comey-sent-to-fbi-employees-explaining-his-controversial-decision-on-the-clinton-email-investigation>

3. On October 30, 2016, two days after the letter, the New York Times reported that the DOJ had obtained a search warrant to review the emails in question.<sup>2</sup>

4. Plaintiff has been unable to locate reporting on how or on what basis the search warrant was obtained.

5. On November 12, 2016, plaintiff submitted a FOIA request (“the Request”) seeking the search warrant and related application, affidavits, and receipts used by the FBI and Justice Department to obtain the review of Huma Abedin’s emails related to Hillary Clinton. See Ex. A.

6. The American public has a strong interest in the disclosure of the search warrant and related application, affidavits, and receipts. The FBI is the nation’s premier law enforcement agency. Access to the records that underlie criminal investigations is crucial to ensuring that the FBI is accountable for following the legal standards it is required to uphold.

7. Transparency and accountability are most important in cases such as this one, where the investigation in question is heavily politicized, dominated and continues to dominate national media and the national sphere of conversation, and may have significantly influenced the outcome of the election. Access to the search warrant and related materials that provided the basis for the investigation are of the utmost public importance.

8. Plaintiff seeks an injunction requiring defendant to process the Request immediately.

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2 Matt Apuzzo, Michael S. Schmidt, and Adam Goldman. *Justice Department Obtains Warrant to Review Clinton Aide’s Emails*, N.Y. TIMES, Oct. 30, 2016, <http://www.nytimes.com/2016/10/31/us/politics/justice-department-warrant-clinton-abedin-fbi.html>

### **Jurisdiction and Venue**

9. This Court has subject matter jurisdiction of the FOIA claim and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(b). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331.

10. The FBI failed to respond to Plaintiff's FOIA request in the time allotted by statute. Therefore, Plaintiff is deemed to have exhausted all administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(c).

11. Venue lies in this district under 5 U.S.C. § 1331 as the computer and information in question was initially held in New York.

### **Parties**

12. Plaintiff E. Randol Schoenberg is an attorney based in Los Angeles, California, widely known for his efforts to recover property stolen by the Nazis during the Holocaust. He has been a commentator on legal matters of national importance for decades, including the matter at hand.<sup>3</sup>

13. Defendant DOJ is a department of the executive branch of the U.S. government and an agency within the meaning of 5 U.S.C. § 552(f)(1). Defendant FBI is a component of DOJ. DOJ is headquartered in Washington, D.C.

### **Factual Background**

14. In March 2015, the New York Times broke a story that Hillary Clinton used a private email server to conduct official State Department business.<sup>4</sup>

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<sup>3</sup> E. Randol Schoenberg, *Investigate the FBI*, November 14, 2016. <http://schoenblog.com/?p=1008>

<sup>4</sup> Michael S. Schmidt, *Hillary Clinton Used Personal Email Account at State Dept., Possibly Breaking Rules*, N.Y. TIMES, Mar. 5, 2015, <http://www.nytimes.com/2015/03/03/us/politics/hillary-clintons-use-of-private-email-at-state-department-raises-flags.html>

15. The use of the private email server led to an FBI investigation into whether there was evidence of classified information being improperly stored or transmitted in violation of federal statutes.<sup>5</sup>

16. The FBI investigation revealed that out of 30,000 emails examined, there were 110 emails containing classified information.<sup>6</sup>

17. On July 5, 2016, the FBI concluded that there was no evidence Secretary Clinton intended to violate laws and merely acted carelessly; thus the circumstances did not warrant any further FBI action. The FBI closed the investigation.<sup>7</sup>

18. On October 27, 2016, an FBI investigative team briefed FBI director James Comey that, during its unrelated investigation in Anthony Weiner's child pornography case, the team had discovered emails on Weiner's computer between Secretary Clinton and Huma Abedin, Weiner's ex-wife and Clinton's top aide.<sup>8</sup>

19. The next day, on October 28, 2016, Comey wrote a public letter to Congress indicating that the FBI intended to re-open the July 2015 investigation, despite having no

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<sup>5</sup> *Statement by FBI Director James B. Comey on the Investigation of Secretary Hillary Clinton's Use of a Personal Email System*, FBI NATIONAL PRESS OFFICE, July 5, 2016, <https://www.fbi.gov/news/pressrel/press-releases/statement-by-fbi-director-james-b-comey-on-the-investigation-of-secretary-hillary-clinton2019s-use-of-a-personal-e-mail-system>

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Adam Goldman and Alan Rappeport, *Emails in Anthony Weiner Inquiry Jolt Hillary Clinton's Campaign*, N.Y. TIMES, Oct. 28, 2016, <http://www.nytimes.com/2016/10/29/us/politics/fbi-hillary-clinton-email.html>

way of knowing whether the material found on Weiner's computer was significant or even whether any of the emails in question contained classified information.<sup>9</sup>

20. Two days after Comey's letter to Congress, the Justice Department obtained a warrant to search the Abedin emails on Weiner's computer.<sup>10</sup>

21. Weiner's computer was initially processed in New York.<sup>11</sup>

22. To plaintiff's knowledge, there has been no further reporting on the investigation that has revealed either the basis on which the search warrant was issued or who issued the warrant.

23. On November 6, 2016, nine days after Comey's letter to Congress and two days before the presidential election, the FBI announced that it would stand by its original finding that Clinton's actions did not warrant prosecution.<sup>12</sup>

24. Comey's public notification to Congress of the decision to re-open the investigation was contrary to ordinary protocol, as details of FBI investigations are typically kept secret.

25. For nine of the last eleven days before the election, Comey's announcement dominated the national media and conversation.

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<sup>9</sup> *Letter to Congress From F.B.I. Director on Clinton Email Case*, N.Y. Times, Oct. 28, 2016, <http://www.nytimes.com/interactive/2016/10/28/us/politics/fbi-letter.html>

<sup>10</sup> Adam Goldman and Michael S. Schmidt, *Sorting Through the Clinton Email Case and What the F.B.I.'s Options Are*, N.Y. Times, Nov. 3, 2016, <http://www.nytimes.com/2016/11/04/us/fbi-james-comey-hillary-clinton.html>

<sup>11</sup> *Id.*

<sup>12</sup> Kevin Johnson, Heidi Przybyla, and Fredreka Schouten, *FBI Declares it is Finally Done Investigation Hillary Clinton's Email*, USA TODAY, Nov. 6, 2016, <http://www.usatoday.com/story/news/politics/elections/2016/2016/11/06/fbi-not-recommending-charges-over-new-clinton-emails/93395808/>

26. Countless American citizens, including Secretary Clinton, believe that Comey's announcement and the re-opening of the investigation might have single-handedly swayed the election, due largely to the fact that voters who decided in the final week before the election voted strongly in favor of Donald Trump.<sup>13</sup>

27. Many members of the public have doubts about the propriety and legality of re-opening of the investigation. Senate Democratic leader Harry Reid wrote an open letter which accused Comey of using his official authority to influence the election, in violation of the Hatch Act.<sup>14</sup>

28. Access to the search warrant is critical for the public to learn the basis for the re-opening of the investigation to ensure that the FBI acted in a manner consistent with its constitutional obligations under the Fourth Amendment.

#### **Plaintiff's FOIA Request and the Government's Response to the Request**

29. On November 12, 2016, plaintiff submitted the Request for the search warrant and related application, affidavits, and receipts. Attached hereto as Exh. A.

30. By email dated November 14, 2016, the FBI acknowledged receipt of the Request and stated that it would be forwarded to Initial Processing for review. Attached hereto as Exh. B.

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13 Nate Silver, *Why FiveThirtyEight Gave Trump A Better Chance Than Almost Anyone Else*, FIFTYTHREEEIGHT, Nov. 11, 2016, <http://fivethirtyeight.com/features/why-fivethirtyeight-gave-trump-a-better-chance-than-almost-anyone-else/>

14 Letter from Harry Reid, Senate Minority Leader, to James Comey, FBI Director (Oct. 30, 2016), *available at* [http://www.reid.senate.gov/press\\_releases/2016-10-30-in-letter-reid-says-comey-may-have-broken-the-law#.WECeLUeJBxblueb](http://www.reid.senate.gov/press_releases/2016-10-30-in-letter-reid-says-comey-may-have-broken-the-law#.WECeLUeJBxblueb)

31. The U.S. Department of Justice further acknowledged the Request in a letter dated November 29, 2016, assigning the FOIPA Request No. 1361976-000. Attached hereto as Exh. C.

32. The FBI has to date produced no records in response to the Request.

**Cause of Action**

33. Defendant's failure to promptly make available the records sought by the Request violates the FOIA, 5 U.S.C. § 552(a)(6)(A), and defendant's corresponding regulations.

**Request for Relief**

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Order defendant to immediately process all records responsive to the Request;
- B. Award plaintiff its costs and reasonable attorneys' fees incurred in this action; and
- C. Grant such other relief as the Court may deem just and proper.

Dated: December 7, 2016  
New York, New York

Respectfully submitted,



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Exhibits:

- Ex. A: Email copy of original FOIA request
- Ex. B: FBI email acknowledging receipt of the request
- Ex. C: FBI mail acknowledging receipt of the request